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QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.

By


Evelyn Gomez

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Attorney Docket No. 21-000730US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Alex HUTCHESON, et al.

Application No.: 10/188,020

Filed: July 1, 2002

For: **NOVEL SYNERGISTIC
ANTIMICROBIAL COMPOSITIONS
AND METHODS**

Examiner: Unassigned

Art Unit: 1616

PETITION PURSUANT TO 37 C.F.R.
1.47(b)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Pursuant to 37 C.F.R. 1.47 (b), Applicants hereby petitions the Patent Office to accept the attached signed Declaration on behalf of a nonsigning inventor.

The pertinent facts are as follows:

- a) Inventor Frank Swenson signed an Employment, Non-Disclosure and Assignment Agreement with SureCide Technologies, LLC on November 22, 2000, which agreement stipulated that the inventor "hereby assigns to the Company, or its designee, all rights, title, interests in and to any and all inventions, original works of authorship, developments, concepts, improvements or trade secrets, whether or not patentable or registrable under copyright or similar laws, which Employee may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period Employee is employed by the Company" (see attachment #1, Section 9(b)).
- b) Present application was filed on July 1, 2002; Inventor left the employment of SureCide Technologies, LLC on July 30, 2002.

- c) Several attempts at contacting Invenor have been made, including sending the documents by certified mail on August 22, 2002 (see attachment #2). The certified mail was returned as unclaimed on September 11, 2002.
- d) The Inventor has, so far, failed to sign the required documents.

Applicants note that the Notice to File Missing Parts of Nonprovisional Application was mailed August 7, 2002. A response to Missing Parts must be filed, requiring submission of the statutory basic filing fee, a signed declaration, and a late filing fee. Such action is necessary to preserve the rights of the Assignee (SureCide Technologies, LLC), i.e., to avoid abandonment of the application.

The last know address for the Inventor is:

Frank Swenson
262 Ratto Road
Alameda, California 94502

Applicants respectfully request that the Patent Office accept the signature of an officer of SureCide Technologies, LLC in lieu of Inventor Frank Swenson on the accompanying Declaration.

Please charge \$130.00, pursuant to 37 C.F.R. 1.17(i), for entry and consideration of this petition to deposit account number 50-0893. In addition, please charge any other fee that is required for entry and consideration of this petition to the above noted deposit account, or credit any overpayment.

QUINE INTELLECTUAL
PROPERTY LAW GROUP, P.C.
P.O. BOX 458
Alameda, CA 94501
(510) 337-7871
Fax (510) 337-7877

Respectfully submitted,



Angela P. Horne, Ph.D.
Reg. No. 41,079

**EMPLOYMENT, NON-DISCLOSURE
and ASSIGNMENT AGREEMENT**

This Employment, Non-Disclosure and Assignment Agreement (hereinafter the "Agreement") is effective as of December 4, 2000 by and between Montclair Group Limited, having an address at located at 2101 Webster Street, Suite 1560, Oakland, California 94612-3037, together with its subsidiaries, affiliates, successors or assigns (hereinafter collectively the "Company"), and Frank Swenson, having an address at 3942 5th Avenue South, Kirkland, Washington 98033 ("Employee").

WHEREAS, as a condition of employment with the Company and in consideration of employment with Company and receipt of compensation and benefits from Company, Employee and Company desire to enter into an agreement setting forth the terms and conditions of Employee's employment with the Company, including obligations regarding non-disclosure of confidential information and assignment of inventions, made, conceived, invented or reduced to practice during such employment;

NOW, THEREFORE, for and in consideration of the premises, mutual covenants and promises contained herein, Company and Employee agree as follows:

1. **At-Will Employment.** The Company hereby employs Employee to serve as an employee of the Company and to serve in such positions for any Affiliate of the Company as the Company may designate from time to time. For purposes of this Agreement an "Affiliate" shall mean: (a) a business entity which owns, directly or indirectly, a controlling interest in the Company, by stock ownership or otherwise; or, (b) a business entity which is owned by the Company, either directly or indirectly, by stock ownership or otherwise; or, (c) a business entity, the majority ownership of which is directly or indirectly common to the majority ownership of the Company. Employee acknowledges that employment with the Company is for an unspecified duration and constitutes "at-will" employment. Employee acknowledges that this employment relationship may be terminated at any time, with or without good cause or for any or no cause, at the option of either the company or Employee, with or without notice.
2. **Compensation.** Payment of all compensation to Employee hereunder shall be made in accordance with the relevant Company policies in effect, including normal payroll practices, and shall be subject to all applicable employment and income tax withholdings. The initial salary to be paid to Employee is as set forth in the fully executed offer letter which is attached hereto as Exhibit E, and is subject to increase or decrease at the discretion of the Company.
3. **Other Employment Benefits.**
 - (a) **Benefit Plans.** Employee shall be entitled to participate in Company's health and medical plans and disability insurance plans pursuant to their terms and conditions. Employee shall be entitled to participate in any other benefit plan generally offered by Company to its employees during the term of this Agreement. Nothing in this Agreement shall preclude the Company or any

Affiliate from terminating or amending any employee benefit plan or program from time to time.

- (b) Vacation. Employee shall be entitled to the vacation time set forth in Exhibit E, as long as the scheduling of Employee's vacation does not interfere with the Company's normal business operations.
 - (c) Business Expenses. Upon submission of itemized expense statements in the manner specified by Company, Employee shall be entitled to reimbursement for reasonable business and travel expenses duly incurred by Employee in the performance of duties under this Agreement.
- 4. Competitive Employment. During the term of Employee's employment with Company, Employee agrees not to engage in any employment, occupation, consulting, or other activity in any business competitive with the business interests of Company or Affiliates without Company's written consent.
 - 5. No Conflicting Obligations. Employee warrants and represents that Employee's performance under this Agreement does not and will not breach any agreements Employee may have to any third parties, including without limitation, any obligations of confidentiality to third parties. Employee agrees not to disclose to Company any confidential or proprietary information or material belonging to any previous employer or other person or entity. Employee further agrees not to enter into any agreement, whether written or oral, which would be in conflict with any terms or conditions of this Agreement.
 - 6. Standard of Performance. In performing duties and responsibilities as an employee of the Company, Employee agrees at all times to; (i) act in a responsible and professional manner and in a manner which reflects favorably upon the Company, its business and employees, and (ii) comply with all applicable federal, state, regional and local laws, rules and regulations.
 - 7. Conflict of Interest Guidelines. Employee agrees to diligently adhere to the Conflict of Interest Guidelines which are attached as Exhibit A.
 - 8. Confidentiality. Employee agrees to maintain in confidence and not to disclose or use, either during or after the term of Employee's employment, any proprietary or confidential information or know-how belonging to the Company ("Confidential Information"), whether or not in written form, except to the extent required to perform duties on behalf of the Company. Confidential Information refers to any information, not generally known in the relevant trade or industry, which was obtained from the Company, or which was learned, discovered, developed, conceived, originated or prepared by Employee in the scope of Employee's employment. Such Confidential Information includes, but is not limited to, software, technical and business information relating to Company's technical data, trade secrets, know-how, inventions, products, research and development, biological materials, production processes, manufacturing and engineering processes, machines and equipment, finances, customers and customer lists, suppliers, designs, drawings, hardware configuration information, marketing, costs, pricing, production and future business plans and any other information which is identified as confidential by Company. Upon termination of employment or at the request of the Company before termination, Employee will deliver to Company all

written and tangible material in Employee's possession which incorporates the Confidential Information or otherwise relates to Company's business. These obligations with respect to Confidential Information extend to information belonging to customers and suppliers of the Company who may have disclosed such information to Employee as the result of Employee's status as an employee of Company.

9. Assignment and Inventions.

- (a) Inventions Retained and Licensed. Employee's list describing all inventions, original works of authorship, developments, improvements and trade secrets which were made by Employee prior to employment with the Company (collectively referred to as "Prior Inventions") is attached hereto as Exhibit B. Employee warrants and represents that Employee owns, in whole or in part, or was an inventor or co-inventor of all items listed on Exhibit B, all of which are not assigned to the Company hereunder. If no such list is attached, Employee represents that there are no such Prior Inventions. If in the course of Employee's employment with the Company, Employee incorporates into a Company product, process or machine any Prior Invention owned by Employee or in which Employee has an interest, the Company is hereby granted and shall have a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, use and sell such Prior Invention as part of or in connection with such product, process or machine.
- (b) Assignment of Inventions. Employee agrees to promptly make full written disclosure to the Company, and hold in trust for the sole right and benefit of the Company and hereby assigns to the Company, or its designee, all rights, title, interests in and to any and all inventions, original works of authorship, developments, concepts, improvements or trade secrets, whether or not patentable or registrable under copyright or similar laws, which Employee may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period Employee is employed by the Company (collectively referred to as "Inventions"), except as provided in Section 9(f) hereunder. Employee further acknowledges that all original works of authorship which are made by Employee, either solely or jointly with others, within the scope of and during the period Employee is employed by the Company and which are protectable by copyright are "works made for hire," as defined in the United States Copyright Act.
- (c) Inventions Assigned to the United States. Employee agrees to assign to the United States government all right, title and interest in and to any and all Inventions whenever such full title is required to be assigned, conveyed, or transferred to the United States government under a contract between the Company and the United States or any of its agencies.
- (d) Maintenance of Records. Employee agrees to keep and maintain adequate and current written records of all Inventions made by Employee, either solely or jointly with others, during the term of Employee's employment with the Company. The records will be in the form of laboratory notebooks, notes, sketches, drawings and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

- (e) Patent and Copyright Registrations. Employee agrees to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's right in the Inventions and any copyrights, patents, patent applications or other intellectual property rights relating thereto, in any and all countries, including: the disclosure to the Company of all pertinent information and data; the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain rights. Employee also agrees to assist the Company, or its designee, at Company's expense in any way necessary to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interests in and to such Inventions and copyrights, patents, mask work rights or other intellectual property rights relating thereto. Employee further agrees that Employee's obligation to execute, or cause to be executed, any such instrument or papers shall continue after termination of this Agreement. If Company is unable, because of Employee's mental or physical incapacity or for any other reason, to secure Employee's signature to apply or pursue any application for any patent or copyright registrations covering Inventions or original works of authorship assigned to the Company, Employee hereby and irrevocably designates and appoints Company and its duly authorized officers and agents as Employee's agent and attorney-in-fact, to act for and in behalf of Employee to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by Employee.
- (f) Exception to Assignments. Employee acknowledges that the provisions of this Agreement requiring assignment of Inventions to the Company do not apply to any invention which qualifies fully under the provisions of the California Labor Code Section 2870, which is attached hereto as Exhibit C. Employee agrees to advise Company promptly in writing of any inventions that Employee believes meet the criteria in California Labor Code Section 2870 and which are not otherwise disclosed on Exhibit B.
10. Survival. Articles 8, 9, 12, 13, 14, 18 and 22 shall survive termination of this Agreement. This Agreement does not in any way restrict the rights of the Employee or the Company to terminate Employee's employment by the Company, at any time, for any reason or for no reason.
11. Return of Company Materials. Employee agrees, at the time of leaving the employ of the Company, to deliver to the Company any and all devices, laboratory notebooks, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, biological materials, equipment, other documents of property, or reproductions of any such items developed by Employee during employment with the Company or otherwise belonging to the Company, its successors or assigns. Employee agrees not to keep, recreate, copy or deliver to anyone else any of the aforesaid items. In the event of termination of employment, by either Employee or Company, Employee agrees to sign and deliver to the Company the Termination Certification which attached hereto as Exhibit D.

12. Notification of New Employer. In the event that Employee leaves the employ of the Company, Employee hereby consents to notification by the Company to Employee's new employer, solely to inform such new employer of Employee's rights and obligations under this Agreement.
13. Non-solicitation. Employee will not during employment or within one (1) year after termination, directly or indirectly, solicit, induce, recruit or encourage any employee, agent, independent contractor, supplier, customer, consultant or any other person or company to terminate or alter a relationship with the Company or any Affiliate, without the express written consent of an authorized representative of the Company.
14. Specific Performance. A breach or threatened breach of any of the promises or agreements contained herein will result in irreparable, inestimable and continuing damage to Company for which there will be no adequate remedy at law. Accordingly, Employee agrees that Company shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper, including monetary damages if appropriate.
15. Waiver. The failure or neglect of either party to exercise any right hereunder or under law, shall not constitute a waiver of any other rights or privileges hereunder. All waivers by either party hereto must be contained in a written instrument signed by Employee and by a duly authorized representative of the Company, other than the Employee.
16. Severability. If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws principles.
18. Choice of Forum. The parties hereby submit to personal jurisdiction of, and waive any venue objections against, the California state courts in Alameda County and the federal courts for the Northern District of California and to the exclusive venue in such courts of any dispute arising out of or in connection with the Agreement.
19. Assignment of Agreement. This Agreement shall inure to the benefit of, and be binding upon and enforceable by, any purchaser of substantially all of Company's assets, any corporate successor to Company or any assignee thereof. Employee may not assign or delegate duties under this Agreement and any purported assignment, transfer or delegation thereof shall be void.
20. Construction. The headings and captions of this Agreement are provided for convenience only and are intended to have no effect in construing or interpreting this Agreement. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning and not strictly for or against the Company or Employee.

21. Notices. Any notice, request, consent or approval required or permitted to be given under this Agreement or pursuant to law shall be sufficient if in writing, and if sent by certified or registered mail, with postage prepaid, to Employee's residence (as noted in the Company's records), or to the Company's principal office, as the case may be.
22. Assistance in Litigation. Employee shall, during and after termination of employment, upon reasonable notice, furnish such information and proper assistance to the Company as may reasonably be required by the Company in connection with any litigation in which it or any Affiliate is, or may become a party, provided; however, that such assistance following termination shall be furnished at mutually agreeable times and for mutually agreeable compensation.
23. Alternative Dispute Resolution. For any and all claims, disputes, or controversies arising under, out of, or in connection with this Agreement which the Parties shall be unable to resolve within sixty (60) days, the Party raising such dispute shall promptly advise the other Party of such claim, dispute or controversy in writing which describes in reasonable detail the nature of such dispute. By not later than twenty-one (21) business days after the recipient had received notice of such dispute, each Party shall have selected for itself a representative who shall have the authority to bind such Party and shall additionally have advised the other Party in writing of the name and title of such representative. By not later than thirty (30) business days after the date of such notice of dispute, such representatives shall agree upon a third party which is in the business of providing Alternative Dispute Resolution ("ADR") services (hereinafter, "ADR Provider") and shall schedule a date with such ADR Provider to engage in ADR which shall be conducted in San Francisco, California. Thereafter, the representatives of the Parties shall engage in good faith in an ADR process under the auspices of the selected ADR Provider. If within the aforesaid thirty (30) business days after the date of the notice of dispute the representatives of the Parties have not been able to agree upon an ADR Provider and schedule a date to engage in ADR, or if they have not been able to resolve the dispute within thirty (30) business days after the termination of ADR as provided by the ADR Provider, the Parties shall have the right to pursue any other remedies legally available to resolve such dispute. Notwithstanding the foregoing, nothing in this paragraph shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.
24. Exhibits. All Exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. If any terms and conditions of this Agreement are in conflict with any terms and conditions of any Exhibit to this Agreement, the terms and conditions of this Agreement shall govern.
25. Entire Agreement. This Agreement, including all Exhibits to this Agreement, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral. This Agreement may be amended or modified only with the written consent of both Employee and a duly authorized representative of the Company. No oral waiver, amendment or modification will be effective under any circumstances whatsoever.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date set forth below.

MONTCLAIR GROUP LIMITED

By: Michael J. Hunter for
Michael J. Hunter
Vice President Finance & Chief Financial
Officer

EMPLOYEE:

Frank Swenson
Signature

Frank Swenson

Date: 11/22/00

Date: 11/28/00

U.S.S.N 10/188,020

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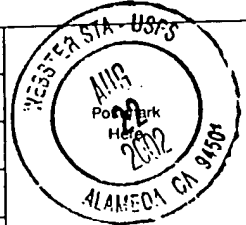
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NOV 25 2002

OFFICE OF PETITIONS

In re Application of
Alex Hutcheson et al
Application No. 10/188,020
Filed: July 1, 2002
Attorney Docket No: 21-000730US

:
:
: DECISION GRANTING
: STATUS UNDER 37 CFR 1.47(a)
:
:

This is in response to the petition under 37 CFR 1.47(a),¹ filed September 30, 2002.

The petition is granted.

Petitioner has shown that the nonsigning inventor has refused to join in the filing of the above-identified application by refusing to accept delivery of a package mailed via certified mail.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the nonsigning inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The power of attorney by assignee filed concurrently with the instant petition has been accepted and made of record in the application file.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-8680.

This application is being forwarded to the Office of Initial Patent Examination for pre-examination processing.


Frances Hicks

Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ The petition is being treated as a petition under 37 CFR 1.47(a). A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors execute an oath or declaration.



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Frank Swenson
26 Ratto Road
Alameda, CA 94502

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NOV 25 2002

OFFICE OF PETITIONS

In re Application of
Alex Hutcheson; Christopher Hawk; and Frank Swenson
Application No. 10/188,020
Filed: July 1, 2002
For: NOVEL SYNERGISTIC ANTIMICROBIAL COMPOSITIONS AND METHODS

Dear Mr. Swenson:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-8680. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:

Quine Intellectual Property Law Group PC
P. O Box 458
Alameda, CA 94501